

FILED

JUL -7 2020

SUSAN Y. SOULING  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA  
OAKLAND OFFICE

Marcus Belton  
United States Penitentiary  
3901 Klein Blvd.  
Lompoc, CA 93436-2706

Pro Se Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

USA

Plaintiff,

vs.

MARCUS BELTON

Defendant.

Case Number: 4:14-cr-00030-JST-1

NOTICE OF MOTION AND MOTION TO  
RECONSIDER ORDER [ECF NOS. 316 -  
09/26/2019] BY A PERSON IN FEDERAL  
CUSTODY OR IN ALTERNATIVE  
GRANT CERTIFICATE OF APPEAL

FILED CONCURRENTLY INFORMAL  
BRIEF [MEMORANDUM OF POINTS  
AND AUTHORITIES] AND  
DECLARATION

NOTICE OF MOTION AND MOTION

1. Now comes, Defendant/Movant, Marcus Belton, pro se by and through the record requesting due process and submits as follows:

CURRENT DOCKET STATUS

2. Defendant filed [ECF 323] the motion on March 17, 2020, arguing that he never received notice of the habeas order or accompanying judgment and only learned of their issuance when the Ninth Circuit denied his mandamus petition. ECF No. 323.
3. On 04/23/2020 Hon'ble Court ordered:

*Accordingly, the Court now ORDERS THE UNITED STATES TO SHOW CAUSE why the Court should not vacate and reenter its judgment dated October 4, 2019. The government's written opposition, if any, is due April 30, 2020. If no opposition is filed, the Court will vacate judgment and reenter it on May 22, 2020, after the likely conclusion of Belton's illness and quarantine, to allow Belton 30 days from that date to file a notice of appeal. If an opposition is filed, Belton may file a response to that opposition by June 22, 2020.*

4. No opposition has been filed by Plaintiff.

MOTION TO RECONSIDER ORDER [ECF NOS. 316 09/26/2019] OR IN ALTERNATIVE GRANT  
CERTIFICATE OF APPEAL BY A PERSON IN FEDERAL CUSTODY

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**DELAY DUE TO COVID-10**

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5. Defendant Marcus Belton cannot comply with his current appellate deadlines because he is infected with COVID-19 and under quarantine. Moreover, if Belton were to attempt to comply with those deadlines, his preparation and delivery of his legal paperwork would place fellow inmates, prison staff, and the public at large at greater risk of infection. Under these “extraordinary circumstances,” the Court has the authority vacate and reenter judgment in order to allow Belton the opportunity to appeal. *Mackey v. Hoffman*, 682 F.3d 1247, 1253-54 (9th Cir. 2012).
6. Therefore Beltons’ filing may or may not be in time. Please condone delay (if any.)

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**MOTION TO RECONSIDER**

7. The Court has discretion to reconsider and vacate a prior order. *Barber v. Hawaii*, 42 F.3d 1185, 1198 (9th Cir. 1994); *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 396 (9th Cir. 1992). Motions to reconsider are committed to the discretion of the trial court. *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (en banc). To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. See *Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in part and reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).
8. Belton has concurrently filed an “Informal Brief” along with this “motion for reconsideration” to show that new or different facts or circumstances claimed to exist which did not exist or were not shown upon such prior motion, or other grounds exist for the motion.
9. Moreover, previously Appellate Court was not presented with all the Appealable issues. To enable Appellate Court, have complete understanding of issue at hand, Belton hereby files
- a. a Motion to Reconsider ECF 316 [Order dated 09/26/2019]
- b. Informal Brief attached to Motion to Reconsider.

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11. Defendant Preserves his Right to Appeal while this Motion to Reconsider and Request for Grant of Certificate of Appealability is pending

(b) *Certificate of Appealability.*

*Federal Rules of Appellate Procedure provides:*

*(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: . . . .*

Defendant

1 STATE OF CALIFORNIA

2 COUNTY OF SANTA BARBARA

3  
4 **AFFIDAVIT/ DECLARATION OF MARCUS BELTON**

5 This Affidavit is submitted in support of Defendants Motion for Reconsideration with  
6 attached Informal Brief and Request for Certificate of Appealability

7 I Defendant never received notice of the habeas order or accompanying judgment and  
8 only learned of their issuance when the Ninth Circuit denied his mandamus petition. ECF No.  
9 323.

10 I cannot comply with his current appellate deadlines because I am/ was infected with  
11 COVID-19 and under quarantine.

12 Upon information and belief, this Court has discretion to reconsider.

13 *The Court has discretion to reconsider and vacate a prior order. Barber v.*  
14 *Hawaii, 42 F.3d 1185, 1198 (9th Cir. 1994); United States v. Nutri-cology, Inc.,*  
15 *982 F.2d 394, 396 (9th Cir. 1992).*

16 *Motions to reconsider are committed to the discretion of the trial court.*  
17 *Combs v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v.*  
18 *Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc).*

19 I have set forth [in Informal Brief] all facts and law of strongly convincing nature to  
20 induce the Court to reverse the prior decision.

21 *To succeed, a party must set forth facts or law of a strongly convincing*  
22 *nature to induce the court to reverse its prior decision. See Kern-Tulare Water*  
23 *Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986), affirmed in*  
24 *part and reversed in part on other grounds, 828 F.2d 514 (9th Cir. 1987).*

25 I have concurrently field an "Informal Brief" along with this "motion for reconsideration"  
26 to show that new or different facts or circumstances claimed to exist which did not exist or were  
27 not shown upon such prior motion, or other grounds exist for the motion.



1 As illustrated in Informal Brief, all my constitutional and due process rights have been  
2 tossed out of the window by Prosecution and Court and I am under wrongful detention in Federal  
3 Prison.

4 I request to the U.S. District Court for the relief to be granted in the interest of justice and  
5 the public trust,

6  
7 Executed: 06 / \_\_\_\_ / 2020

8 /s/ MARCUS BELTON

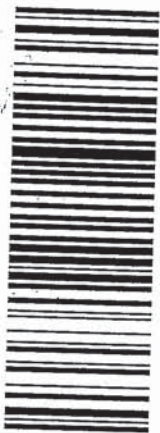
9 MARCUS BELTON

10 Defendant

11 Under penalty of perjury of law of the United States I do declare that the above is correct and  
12 true to the best of My Knowledge and if called to testify I could do so competently I, Marcus  
13 Belton due reside 3901 Klein Blvd. Lompoc, CA. 93436.

MARCUS BELTON 98903011  
6230 Hayes St  
Oakland Ca 94612

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL®**



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U.S. Clerk office

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Oakland Ca 94612

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